

Application No. 09/822,433
Amendment Dated: January 12, 2005
Reply to Office Action of: June 15, 2005

REMARKS/ARGUMENTS

Claims 56 – 63 and 65 – 86 remain in the application.

1. Antecedents

In the Office action the Examiner suggests adding the units “inches” to the specification in view of claims 75 and 81. As indicated in the enclosed markup, paragraph [0074] of the specification has been amended to include the unit “inches” as requested by the Examiner.

2. Anticipation 35 USC §102(b) – Claims 84 and 85

Claims 84 and 85 are rejected in the Office action as being anticipated by DE 197 24 698 A1, filed June 12, 1997 and published December 17, 1998 (the “DE ‘698 reference”).

The present application is a continuation of United States Patent No. 6,298,624, filed January 16, 1998 (the “‘624 patent”). (Pursuant to Applicant’s correspondence dated February 27, 2003, the present application was amended to correctly identify it as a continuation of the ‘624 patent.) Accordingly, pursuant to 35 USC §120 the effective filing date of the present application is the same as the ‘624 patent: January 16, 1998.

Since the effective filing date of the present application was before the publication of the DE ‘698 reference, the DE ‘698 reference does not anticipate claims 84 and 85 of the present application.

3. Obviousness 35 USC §103(a) – Claims 56-63, 65-83 and 86

Claims 56-63, 65-83 and 86 are objected to as obvious in view of United States Patent No. 5,060,443 to Pacione (the “‘443 patent”).

Plastic/Polymer

The ‘443 patent discloses the use of traditional construction materials for the cladding panels. It does not disclose or suggest the use of a plastic or polymer. For example, at column 4, lines 34 to 37, the ‘443 disclosure states that “[i]t is possible, however, for the cladding panels to be formed of any suitable substance, such as for example plaster or fibreglass or even plywood. It is preferable, however, that such substances be flame retardant or even fireproof and reasonably inexpensive.”

Page 8 of 11

194133-340235
TDO-RED #8277965 v. 2

Application No. 09/822,433
Amendment Dated: January 12, 2005
Reply to Office Action of: June 15, 2005

This teaches away from selecting plastics or polymers, which are generally not thought of as being flame retardants or construction materials.

Similarly, the first sentence of the Abstract describes "[a]n anchor-board construction system suitable for incorporation into the interior of buildings and homes is disclosed for use as a cladding to replace conventional plaster based wall board similar to that known in the trade as gyprock, having one surface thereof incorporating a layer of protruding attachment hooks." This is also shown in the first sentence of the Detailed Description at column 5, lines 66-68: "A cladding panel 20 as shown in FIG. 1 may have typical dimensions of a conventional plasterboard panel i.e. four feet width by eight feet length, a base thickness of one half inch (nominal)."

The only mention of plastic in the '443 patent is in the context of the finishing sheets (column 3, line 45) and the hook and loop fastening system (column 4, line 32 to 34). If plastic was considered to be a suitable material for the cladding panels, then it would have been included in the description. Instead, plastic was noted to be a suitable material for the hooks and finishing sheets only.

These examples illustrate that the '443 patent disclosure is generally directed to the use of traditional building materials which have characteristics similar to sheets of plaster wall board.

In view of the foregoing, one of ordinary skill in the art would not be motivated by the '443 patent to select an uncommon building material such as plastic that generally does not have flame retarding properties to arrive at the subject matter of Claims 56-63, 65-83 and 86.

Cushion

As noted in the Office action, the '443 patent does not disclose the use of a cushion. In particular, the '443 patent does not disclose or suggest placing a cushion on one side of the cladding and a carpet on the other side of the cladding. To do so would be counter-intuitive. In traditional carpet installations, a cushion is placed directly next to the carpet, with the cushion located between the decorative covering and the floor. In the present application, an anchor sheet is placed *between* the decorative covering and the cushion. The cushion is displaced from the carpet by the anchor sheet. This unusual arrangement would be counter-intuitive to one of ordinary skill in the art.

* * * * *

In view of the foregoing, independent claims 56, 74, 78 and 86, and all claims dependent thereon,

Page 9 of 11

194133-340235
TDO-RED #8277965 v. 2

Application No. 09/822,433
Amendment Dated: January 12, 2005
Reply to Office Action of: June 15, 2005

would not have been obvious in view of the '443 patent.

4. Obviousness 35 USC §103(a) – Claims 56-63, 65-73, 75-77 and 86

Claims 56-63, 65-73, 75-77 and 86 are objected to as obvious in view of United States Patent No. 4,974,384 to Pacione (the “384 patent”).

In the disclosure of the '384 patent, Applicant was unable to find any suggestion that “the panels may be formed of any suitable material”.

The '384 patent is directed to “heavy construction attachment systems” (column 1, lines 6-7). The disclosure does not disclose or suggest novel building materials such as plastic flooring covered with hooks of a hook and loop attachment system. This is clearly stated in the '384 patent: “In addition, the invention presented in this application as well as previous application No. 148,711 filed Jan. 26, 1988 ANCHOR BOARD SYSTEM are not fastening products per se but rather are new designs of *conventional building materials*.” (column 3, line 66 to column 4, line 2; *emphasis added*). This statement is supported by the disclosure of the '384 patent. For example, the disclosure refers to conventional building materials such as “aluminum, or fabricated of metal, or of wood and plywood” (column 4, lines 19-22). Furthermore, there is no mention or suggestion of the word “plastic” anywhere in the description of the '384 patent. The disclosure teaches away from selecting plastics or polymers, which are generally not thought of as traditional construction materials.

The '384 patent discloses that floor panels 40 are supported by joists 32 (column 4, line 24). This arrangement is illustrated in FIG. 2. The '384 patent does not teach that the floor panels are laid side by side on a surface such as a floor. For example, step (a) of claim 68 of the present application includes the step of “laying a plurality of polymer anchor sheets side by side on a *floor*” (*emphasis added*).

The foregoing illustrates that the '384 patent disclosure is generally directed to the use of traditional building materials such as metal, wood and plywood, but not plastics. The '384 patent also discloses floor panels 40 supported by joists, not a surface such as a floor. The '384 patent lacks any suggestion that the reference should be modified in a manner required to meet the claims. Accordingly, one of ordinary skill in the art would not be motivated by the '384 patent to arrive at the subject matter of Claims 56-63, 65-73, 75-77 and 86.

Page 10 of 11

194133-340235
TDO-RED #8277965 v. 2

Application No. 09/822,433
Amendment Dated: January 12, 2005
Reply to Office Action of: June 15, 2005

In view of the foregoing, independent claims 56 and 86, and all claims dependent thereon, would not have been obvious in view of the '384 patent.

5. New Claims

New claim 87 and 88 are added to provide the Applicant with a scope of protection commensurate with the disclosure. Support for these claims may be found, for example, at paragraph [101].

6. Closing Remarks

In view of the above comments, the Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,



Brian W. Gray, Agent for Applicant (Registration No. 30,017)

Date: June 15, 2005

McCarthy Tétrault LLP
P.O. Box 48, Suite 4700, Toronto Dominion Bank Tower
66 Wellington St. West
Toronto, Ontario M5K 1E6, Canada

Tel: (416) 362-1812
BWG/jdh